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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 MERRELL C. SAGER,

11 Plaintiff,

12 v.

13 RICHARD C. ADAMSON, in his judicial and
14 individual capacity; MASON COUNTY,
15 WASHINGTON; MASON COUNTY
16 SUPERIOR COURT; MASON COUNTY
17 SHERIFF'S DEPARTMENT; SHERIFF
18 CASEY SALISBURY, in his official and
19 personal capacity,

20 Defendants.

21 Case No. C08-5463 FDB

22 ORDER DENYING PLAINTIFF'S
23 MOTION FOR AN EXTENSION OF
24 TIME AND GRANTING
25 DEFENDANTS' RULE 12(b)(6)
26 MOTION TO DISMISS

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28 This is a civil rights and tort action relating to the removal of a litigant from a courtroom by a
29 Mason County Superior Court Commissioner. This matter comes before the Court on Defendants'
30 motion for dismissal pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief
31 can be granted. After having reviewed all materials submitted by the parties and relied upon for
32 authority, the Court is fully informed and hereby denies Plaintiff's motion for an extension of time to
33 conduct discovery and grants the Defendants' the motion for dismissal for failure to state a claim.
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35 **Introduction and Background**

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1 Plaintiff's Sager's Amended Complaint alleges that Mason County Court Commissioner
2 Richard Adamson ordered that Plaintiff be removed from a courtroom and arrested for tape
3 recording a hearing in which Plaintiff was a party and Commissioner Adamson was presiding.
4 Plaintiff further asserts that the Commissioner continued the judicial proceedings without providing
5 Plaintiff Sager the opportunity to be heard. Plaintiff asserts that the Commissioner's actions were
6 negligent and that he acted in a knowingly, intentionally, willfully biased manner towards Mr. Sager.
7 Although the Plaintiff names as additional defendants Mason County, Mason County Superior Court,
8 Mason County Sheriff's Department, and Mason County Sheriff Casey Salisbury, the Amended
9 Complaint alleges no facts regarding the involvement of these persons and/or entities in the incident.
10 Plaintiff's Amended Complaint asserts causes of action for violation of his civil rights, false arrest
11 and kidnaping, defamation, and a violation of due process.

12 **Rule 12(b)(6)**

13 On a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), the
14 Court must construe the complaint in the light most favorable to the plaintiff, taking all his allegations
15 as true and drawing all reasonable inferences from the complaint in his favor. A complaint should be
16 dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of
17 facts in support of his claim which would entitle him to relief. Doe v. U.S., 419 F.3d 1058, 1062 (9th
18 Cir. 2005). The complaint need not set out the facts in detail; what is required is a "short and plain
19 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a); La Salvia v.
20 United Dairymen, 804 F.2d 1113, 1116 (9th Cir. 1986). Thus, the Court's task is merely to assess the
21 legal feasibility of the complaint. Cooper v. Parsky, 140 F.3d 433, 440 (2nd Cir. 1998).

22 Plaintiff requests the Court delay consideration of the Rule 12(b)(6) motion in order that he be
23 permitted to conduct discovery. The purpose of rule 12(b)(6) is to test the sufficiency of the
24 statement of a claim showing that plaintiff is entitled to relief, without forcing defendant to be
25 subjected to discovery. Cervantes v. City of San Diego, 5 F.3d 1273, 1276 (9th Cir. 1993). The
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1 motion to dismiss does not involve evaluating the substantive merits of the claim. The complaint
2 should be dismissed where plaintiff fails to state a claim showing that the pleader is entitled to relief.
3 Plaintiff Sager has not established any grounds to justify an extension of time. The motion to dismiss
4 assumes the truth of all well-pleaded facts and raises the purely legal issue of sufficiency of the
5 pleading to support the alleged legal claims. Accordingly, Plaintiff's motion for an extension of time
6 is denied.

Absolute Judicial Immunity

Judicial immunity is “an absolute immunity from all claims relating to the exercise of judicial functions.” Antoine v. Byers & Anderson, 508 U.S. 429, 433 n. 8 (1993). It is well-settled that a judge is entitled to absolute immunity for all acts committed within his judicial jurisdiction, including grave procedural errors. The necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him. A judge is not be deprived of immunity because the action taken was in error, was done maliciously, or was in excess of his authority. Stump v. Sparkman, 435 U.S. 349, 356-57 (1978). This absolute “judicial immunity is not overcome by allegations of bad faith or malice,” nor can a judge “be deprived of immunity because the action he took was in error ... or was in excess of his authority.” Id., at 356. Judicial immunity applies to all types of judges at all levels of courts. O’Neil v. City of Lake Oswego, 642 F.2d 367, 368, n. 2 (9th Cir. 1981). Such judicial immunity extends to judicial acts allegedly committed in contravention of 42 U.S.C. § 1983. Pierson v. Ray, 386 U.S. 547, 554 (1967).

21 Whether an act is judicial depends on the nature and function of the act, not the act itself.
22 Mireles v. Waco, 502 U.S. 9, 13 (1991). Courts look to two factors in making this determination: the
23 nature of the act, i.e. whether the act is a measure normally performed by a judge, and the
24 expectations of the parties, i.e. whether the parties dealt with the judge in his judicial capacity. Id. at
25 12. The Ninth Circuit has identified the following factors as relevant to the determination of whether
26 ORDER - 3

1 a particular act is judicial in nature: (1) the precise act is a normal judicial function; (2) the events
2 occurred in the judge's chambers; (3) the controversy centered around a case then pending before the
3 judge; and (4) the events at issue arose directly and immediately out of a confrontation with the judge
4 in his or her official capacity. Duvall v. County of Kitsap, 260 F.3d 1124, 1133 (9th Cir. 2001)(Judge
5 acted in judicial capacity if refusing to provide real-time transcription at hearings).

6 Maintaining order in a judicial or quasi-judicial proceeding is an integral part of the judicial
7 function. See, e.g., Mireles, at 10-13 (holding that a judge's order to his courtroom police officers "to
8 forcibly and with excessive force seize and bring plaintiff into his courtroom" was a judicial act). It is
9 within a judge's power, and indeed a judge's obligation, to protect the sanctity and dignity of
10 courtroom proceedings. Gregory v. Thompson, 500 F.2d 59, 64 (9th Cir. 1974). A judge acts in his
11 judicial capacity when he exercises control over his courtroom, and by extension, when he bars a
12 litigant or attorney from the courtroom. Cameron v. Seitz, 38 F.3d 264, 271 (6th Cir. 1994);
13 Sheppard v. Maxwell, 384 U.S. 333, 358 (1966). In some cases it may be necessary to use physical
14 force to preserve order. In such cases, the proper conduct for a judge is to summon a sheriff to escort
15 the disruptive individual from the courtroom. Id., at 64-65.

16 Even assuming that Commissioner Adamson acted in excess of his authority in prohibiting
17 recording of the proceedings, removing Sager form the courtroom and continuing the proceedings in
18 his absence, that does not mean that he acted in the absence of all jurisdiction, particularly when his
19 actions are "taken in the very aid of the judge's jurisdiction over a matter before him" Mireles v.
20 Waco, 502 U.S. 9, 13 (1991). Construing the complaint in the light most favorable to the Plaintiff,
21 taking all his allegations as true and drawing all reasonable inferences from the complaint in his favor,
22 indicates that Plaintiff has not stated a claim upon which relief can be granted. The allegations in the
23 Amended Complaint show clearly that all the acts of which Plaintiff Sager complains occurred in the
24 course of judicial proceedings conducted by Defendant Commissioner Adamson. Judges have
25 absolute immunity for acts done in the exercise of this judicial function. In sum, Commissioner
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1 Adamson clearly acted within his jurisdiction when he had prohibited taping, had Plaintiff removed
2 from his courtroom, and continued the proceedings. Thus, Commissioner Adamson is absolutely
3 judicially immune from Plaintiff's suit.

4 Court officers sworn to execute court orders are shielded by absolute immunity in the
5 performance of their duty. Martin v. Hendren, 127 F.3d 720, 721 (8th Cir.1997); Valdez v. City and
6 County of Denver, 878 F.2d 1285, 1288 (10th Cir. 1989); Henry v. Farmer City State Bank, 808 F.2d
7 1228, 1239 (7th Cir. 1986). The conduct of a sheriff in escorting an individual from a courtroom
8 when summoned by a judge to do so affords the sheriff judicial immunity. Gregory v. Thompson, 500
9 F.2d 59, 64-65 (9th Cir. 1974). Here, at the most, the Mason County Sheriff was following the
10 explicit order of Mason County Court Commissioner Adamson to remove Plaintiff from the
11 courtroom. Plaintiff's action against the Mason County Sheriff for enforcing that court order and
12 interfering with his alleged right to remain in the courtroom is accordingly barred by judicial
13 immunity.

14 There being no individual liability, municipal liability cannot be imposed upon the Mason
15 County, Mason County Superior Court, and Mason County Sheriff's Department on a respondeat
16 superior basis. Vicarious liability imposes liability on an employer for the torts of an employee who is
17 acting on the employer's behalf. Niece v. Elmview Group Home, 131 Wash.2d 39, 48 (1997). Thus,
18 a court properly dismisses a respondeat superior claim against a defendant employer based on the
19 allegedly tortious actions of its employees when the tort claims against the employees are properly
20 dismissed. Orwick v. Fox, 65 Wn. App. 71, 88, (1992).

21 Additionally, 42 U.S.C. § 1983 liability cannot be imposed on a municipal entity pursuant on a
22 respondeat superior basis. Monell v. New York City Dept. Of Social Services, 436 U.S. 658, 691
23 (1978). Generally, a municipality is liable under Monell only if a municipal policy or custom was the
24 "moving force" behind the constitutional violation. See Galen v. County of Los Angeles, 477 F.3d
25 652, 667 (9th Cir. 2007). In other words, there must be "a direct causal link between a municipal

1 policy or custom and the alleged constitutional deprivation.” City of Canton v. Harris, 489 U.S. 378,
2 385 (1989).

3 **Conclusion**

4 For the above stated reasons the Defendants are entitled to dismissal of Plaintiff’s claims.

5 ACCORDINGLY;

6 IT IS ORDERED:

7 (1) Plaintiff’s Motion to delay proceedings [Dkt. # 18] is **DENIED**.

8 (2) Defendants’ Rule 12(b)(6) motion to dismiss [Dkt. # 16] is **GRANTED** and Plaintiff’s
9 Amended Complaint DISMISSED, with prejudice.

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DATED this 8th day of September, 2008.

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14 FRANKLIN D. BURGESS
15 UNITED STATES DISTRICT JUDGE

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